

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on Sunday  
and Holiday Collections

Docket No. C2001-1

DOUGLAS F. CARLSON  
RESPONSE TO POSTAL SERVICE REPLY TO CARLSON ANSWER IN  
OPPOSITION TO POSTAL SERVICE MOTION FOR RECONSIDERATION

April 24, 2001

I. INTRODUCTION

On April 13, 2001, I served an answer in opposition to the Postal Service's motion for reconsideration of Commission Order No. 1307.<sup>1</sup> On April 20, 2001, the Postal Service filed in this proceeding yet another extra pleading that is not specifically permitted by the Commission's *Rules of Practice*.<sup>2</sup> The Postal Service continues its argument, already dismissed by the Commission in Order No. 1307, that the Commission does not have jurisdiction to hear this complaint. Still dissatisfied with its failure to convince the Commission to dismiss my complaint without a hearing, the Postal Service focuses now on my complaint as amended on March 29, 2001.<sup>3</sup> In that amended complaint, I alleged that the Postal Service's current service levels on holidays, Christmas Eve, and, possibly,

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<sup>1</sup> Douglas F. Carlson Answer in Opposition to Postal Service Motion for Reconsideration ("Carlson Opposition to Reconsideration") (filed April 16, 2001).

<sup>2</sup> Motion of the United States Postal Service for Leave to Reply to the Douglas F. Carlson Answer in Opposition to the Postal Service's Motion for Reconsideration, and Reply to the Answer in Opposition ("Postal Service Reply to Opposition to Reconsideration") (filed April 20, 2001).

<sup>3</sup> Douglas F. Carlson Motion for Leave to Amend Complaint (filed March 29, 2001) and Douglas F. Carlson Notice of Filing of Amended Pages of Complaint (filed March 29, 2001).

New Year's Eve *may* not be adequate within the meaning of 39 U.S.C. § 3661(a). The presiding officer has not yet ruled on my motion to amend my complaint.

The Postal Service now challenges my suggestion, see Carlson Opposition to Reconsideration at 6, that my amended complaint qualifies as a hypothetical claim under the *Federal Rules of Civil Procedure*. Postal Service Reply to Opposition to Reconsideration. The Postal Service essentially claims that my hypothetical claim fails to conform to an “if-then” formulation, *Id.* at 3–4, and that litigants have a general obligation to review the facts and information within their reach before making allegations. *Id.* at 5.

Under the facts and procedural history of this complaint, the Postal Service's position has no merit. The Postal Service obviously has determined that delay is its best defense in this complaint proceeding. The presiding officer should deny the Postal Service's motion for reconsideration, grant my motion to amend my complaint, authorize discovery to commence, and establish a procedural schedule.

## **II. ARGUMENT**

### **A. MY AMENDED COMPLAINT IS VALID AND PROPER.**

#### **1. The form of my amended complaint is proper.**

In my answer in opposition to the Postal Service's motion for reconsideration, I discussed hypothetical claims merely to provide useful guidance from the *Federal Rules of Civil Procedure*, not to suggest that my complaint represents a traditional lawsuit. Carlson Opposition to Reconsideration at 6.

The Commission granted me an opportunity to amend my complaint in Order No. 1307 *after* the Commission determined that the Commission had jurisdiction to hear my complaint. Order No. 1307 at 17. Moreover, unlike the

situation that faces most persons contemplating filing a complaint, the Commission granted me this opportunity with a condition: I could amend my complaint *if* I was going to enter evidence in support of an allegation that holiday and holiday-eve service levels are not adequate. *Id.*

The Commission required me to advise the Commission of a date by which I would amend my complaint. *Id.* Considering that the Commission appeared to be contemplating days or weeks, not, potentially, months, I responded on March 29, 2001, with a motion for leave to amend my complaint to allege that current service levels may not be adequate.<sup>4</sup> Importantly, in my motion, I identified the information that I expected to obtain through discovery to establish that current holiday and holiday-eve service levels are not adequate.

First, on the issue of holiday service levels, I noted a recently discovered letter from the plant manager in Oakland, California, indicating that the Oakland P&DC cancelled and processed 250,000 letters on Memorial Day in 1998. Carlson Motion for Leave to Amend Complaint at 1. I then stated that “[v]olume data obtained through discovery for processing on past holidays will provide a useful insight into the adequacy of postal services on current holidays.” *Id.* at 2.

Second, on the issue of holiday and holiday-eve services, the Commission’s order confirmed that the Postal Service’s failure to provide adequate notice to customers of changes in collection and mail-processing schedules may “rise to a failure or denial to provide a particular service.” Order No. 1307 at 16–17. In my motion, I wrote, “Through discovery and, possibly, my own testimony, I intend to develop evidence describing the Postal Service’s shortcomings in informing the public of holiday service levels.” Carlson Motion for Leave to Amend Complaint at 2. This evidence will, in part, determine the adequacy of holiday and holiday-eve services.

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<sup>4</sup> Douglas F. Carlson Motion for Leave to Amend Complaint (“Carlson Motion for Leave to Amend Complaint”) (filed March 29, 2001).

The Postal Service asserts that acceptable hypothetical claims must be formulated as “if-then” allegations: *If* certain identified facts believed to be true can be shown to be true, *then* a valid basis for relief would be established. Postal Service Reply to Opposition to Reconsideration at 3. My motion for leave to amend my complaint identifies two facts that would lead me to conclude that current holiday service levels are not adequate: high volume data from holidays in previous years when plants processed outgoing mail, and the inadequacy of notice provided to customers concerning holiday and holiday-eve service levels. I submit that my revised complaint, as explained in my motion for leave to amend my complaint, satisfies the elements of an if-then formulation.

According to Rule 8(f) of the *Federal Rules of Civil Procedure*, “All pleadings shall be so construed as to do substantial justice.” Fed. R. Civ. P. 8(f). I have identified the conditions under which my hypothetical claim would be proved; thus, I have fulfilled the purpose of a strict if-then formulation. Therefore, my revised complaint would be a valid hypothetical claim under the federal rules.

I also note, once again, that this complaint is not a lawsuit in federal court. While the federal rules serve as a useful guide, the somewhat unusual procedural circumstances under which I moved to amend my complaint — responding to an offer from the Commission, after the Commission determined that it had jurisdiction to hear this complaint — also must be considered in determining whether I have sufficiently articulated a valid claim.

## **2. I investigated the claim sufficiently before amending my complaint.**

The Postal Service alleges that I am attempting to use the discovery process to investigate a claim that I should have investigated before I filed it. Postal Service Reply to Opposition to Reconsideration at 4–5. The Postal Service cites a district-court case holding that litigants retain a “general obligation to review the facts and information *within their reach* before making allegations”

[emphasis added]. *Id.* at 5 (quoting *Sprague Farms Inc. v. Providian Corp.*, 929 F.Supp. 1125 (D. Ill. 1996)). The Postal Service's indented quotation contains another noteworthy sentence: "Third parties and opponents did not control this information — *Sprague Farms* [the plaintiff] did." *Id.* This complaint case differs markedly from *Sprague Farms*. As I explained previously, I have not been willing to allege that current holiday service levels are not adequate until I review the volume data from holidays in past years when the Postal Service processed outgoing mail. This information is under the control of the *Postal Service*, not me. The *Sprague Farms* court reasonably required the plaintiff to conduct some investigation before filing a lawsuit, but the plaintiff, *Sprague Farms*, controlled the information. Here, the Postal Service controls the information that I am seeking to discover. The *Sprague Farms* case does not control when the defendant, as here, holds the information that the plaintiff needs to prove his claim.

As I noted in my answer in opposition to the Postal Service's motion, I probably could obtain this information through the Freedom of Information Act. FOIA requests to the Postal Service are not, however, necessarily an effective way to obtain information from the Postal Service, even if the requester has a lawful right to obtain the information.<sup>5</sup> Moreover, a requester cannot count on the Postal Service to abide by the law requiring the Postal Service to provide the information within 20 working days. *See* fn. 5, *supra*. Given that the Commission may not have been willing to defer amendment of my complaint until the Postal Service responded to my FOIA request, and considering that the Commission was trying to avoid a future complaint that would cover much of the same territory as this complaint, Order No. 1307 at 17, I reasonably sought to

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<sup>5</sup> On November 27, 1999, I submitted a FOIA request to the Postal Service to obtain information pertaining to posted collection times on collection boxes for a particular city. One hardly can imagine a FOIA request for information that already is more clearly in the public domain than this information, since most of it is posted on collection boxes in public view or is available by calling 1-800-ASK-USPS. Nonetheless, the Postal Service refused to disclose some of the information, including the posted collection times. The Postal Service ignored my administrative appeal. I filed a lawsuit in federal court, and the Postal Service finally provided the information on March 28, 2001 — 16 months later.

state a claim that one might consider hypothetical and use the discovery process to prove it.

The Postal Service similarly controls information concerning the notice provided to the public about holiday and holiday-eve service levels. I may properly use the discovery process to prove this claim as well.

**3. To determine the adequacy of the level of service that I am receiving, I must evaluate other customers' need for the service as well as my own.**

The Postal Service suggests that the only valid consideration under section 3662 complaint proceedings is the adequacy of the level of service that the complainant is receiving. Postal Service Reply to Opposition to Reconsideration at 5. This interpretation of the statute is not plausible. The statute does not require the Postal Service to provide service that every person believes is adequate, nor does the statute authorize customers to file a complaint if the service that they receive is not adequate for them personally. The statute requires the Postal Service to provide "adequate and efficient" postal services. This formulation suggests that "adequate and efficient" are objective standards, and adequacy is tempered and influenced by efficiency. For a standard such as this one to be objective, services must, *overall*, be adequate and efficient. Services do not need to meet the requirements of every customer.

Thus, contrary to the Postal Service's suggestion, I do not evaluate my own service level in a vacuum. For example, if I identified a personal need to receive outgoing mail service on Thanksgiving Day, I would not necessarily conclude that the absence of mail service on Thanksgiving Day would be inadequate without knowing volume data, since volume data provide insight into the overall need for service on this holiday. My determination of the adequacy of service also requires consideration of efficiency and other customers' needs.

Stated differently, other postal customers' needs serve as a reality check on my own determination of an adequate level of service. I am unable to conclude that a certain level of service that I am receiving is or is not adequate unless I understand the needs of other customers as well. "Adequate and efficient" is an objective standard based on overall service levels and customer needs. Discovery will provide the information necessary for me to make this determination.

### III. CONCLUSION

For the foregoing reasons, my amended complaint is sufficient for the Commission to consider the adequacy of current service levels. The presiding officer should deny the Postal Service's motion for reconsideration, grant my motion to amend my complaint, authorize discovery to commence, and establish a procedural schedule.

Respectfully submitted,



Dated: April 24, 2001

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DOUGLAS F. CARLSON

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### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



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DOUGLAS F. CARLSON

April 24, 2001  
Santa Cruz, California